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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,562	03/29/2000	Donald F. Gordon	19880-001620US	6071
26291	7590	02/10/2005	EXAMINER	
MOSER, PATTERSON & SHERIDAN L.L.P. 595 SHREWSBURY AVE, STE 100 FIRST FLOOR SHREWSBURY, NJ 07702			TRAN, HAI V	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/538,562	Applicant(s) GORDON ET AL.	
	Examiner Hai Tran	Art Unit 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 16-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 16-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Claim 1, Applicant argues, "Nowhere is there any teaching or suggestion of an array of guide pages"

In response, the Examiner respectfully disagrees because Gordon' s clearly discloses in its commonly assigned US provisional patent Application 60/034,490 filed 01/13/1997 and incorporated herein by reference (see page 19, line 15) wherein Application 60/034,490 clearly discloses "an array of guide pages" in its specification page 19, lines 30-page21 and Fig. 3-4, 7-19.

As to limitation "a transport stream generator for receiving demand-cast stream usage information from the session manager and using said information to control which demand-cast streams associated with guide pages of said array of guide pages are multiplexed into a transport stream for transmission to a plurality of terminals via the distribution network", Gordon (WO 98/31115) discloses which a transport stream generator 202 (see Fig. 1-2) for receiving demand-cast stream usage information from the session manager 216 and using the information to control which demand-cast streams associated with guide pages of the array of guide pages (a program is selected from a program guide) are multiplexed into a transport stream for transmission to a plurality of terminals via the distribution network (page 9, lines 26-page 10, line 8 and page 12, lines 24-page 16, lines 28).

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Applicant does not discuss claims 2-15. For at least the reason set forth above, the rejection is maintained.

Election/Restrictions

Newly submitted claims 16-26 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 1-15, drawn to a system for providing access to an array of guide pages from an interactive program guide within constraints imposed by limited bandwidth available in a distribution network in monitoring the bandwidth usage, classified in class 725, subclass 95-96.
- II. Claims 16-26, drawn to a method of requesting an IPG by a STB, classified in class 725, subclass 39-48.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because (1) the detail of the broadest subcombination claim 16 in Group II, such as "sending...a

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demand-cast index table to said STT; receiving, at said session manager, a communication associated with a demand-cast stream of an IPG page from said STT, said communication comprising one of an acquisition, release, and request for said demand-cast IPG page available from said demand-cast index table by said STT; and receiving, at said transport stream generator, communication from said session manager indicating subject matter of said communication from said STT to said session manager” is not recited in the broadest combination claim 1.

And (2), the subcombination has separate utility such as providing an IPG from a provider.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, Claims 16-26 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being unpatentable by Gordon et al. (WO 98/31115).

Claim1, a system for providing access to array of guide pages from an interactive program guide (selection menus; see US provisional patent Application 60/034,490 filed 01/13/1997 and incorporated herein by reference; page 19, line 15 in which Application 60/034,490 clearly discloses "an array of guide pages" in its specification page 19, lines 30-page21 and Fig. 3-4, 7-19) within constraints imposed by limited bandwidth available in a distribution network (summary of the invention; page 2-5), the system comprising:

A distribution control center coupled to the distribution network (Fig. 1);

A session manager 216 in the distribution control center for monitoring and controlling usage of demand cast stream bandwidth with the distribution network (page 14, lines 7-page 14, lines 31); and

A transport stream generator 202 for receiving demand-cast stream usage information from the session manager and using the information to control which demand-cast streams associated with guide pages of the array of guide pages (a program is selected from a program guide and is associated with the program guide) are multiplexed into a transport stream for transmission to a plurality of terminals via the distribution network (page 12, lines 24-page 16, lines 28).

Claim 2, wherein the pluralities of terminals 124_{1-n} are coupled to a node 110 within the distribution network, and the transport stream is transmitted from the transport stream generator to the node (Fig. 1; page 12, lines 15-30+).

Claim 3, wherein the session manager 216 receives demand-cast stream acquisition, release, and request messages from the plurality of terminals (page 13, lines 21-page 14, lines 16).

Claim 4, wherein the acquisition, release, and request messages are transmitted via out-of-band communications (upstream; page 13, lines 29-35).

Claim 5, wherein the transport stream includes a list of available demand-cast streams (...what programming is available to a particular subscriber...), and the list is used by a terminal in determining whether a stream with a particular guide page may be acquired immediately (...PIN that provides "regular" viewing authorization...) or needs to be requested (...authorizes to access so-called "late night" programming...) see page 19, lines 3-16.

Claim 6, wherein the acquisition message is sent from the terminal to the session manager if the stream is acquired (...the set-top return an acknowledgment ... page 17, lines 18-24), and a request message is sent from the terminal to the session manager if the stream needs to be requested (...requesting a program...page 21, lines 5-10 and page 23, lines 22-26).

Claim 7, wherein a release message is sent from the terminal to the session manager once the terminal is no longer acquiring the stream (page 21,lines 16-19).

Claim 8, wherein the session manager tracks demand-cast streams that are acquired by at least one terminal by maintaining a dynamic list of terminals that are presently acquiring each demand-cast stream (page 18, lines 12-27).

Claim 9, wherein the session manager 216 informs the transport stream generator 202 when a terminal request a demand-cast stream, which is not present in the transport stream (page 14, lines 17-page 15, lines 14).

Claim 10, wherein the session manager 216 informs the transport stream generator 202 when there is no longer any terminals acquiring the demand-cast stream (page 16, lines 29-35; page 21, lines 13-18).

Claim 11, wherein the distribution control center comprises a cable headend (see Fig. 1).

Claim 12, wherein the transport stream generator 202 is co-located with the session manager 216 at the distribution control center (see Fig. 2).

Claim 13, wherein the transport stream generator 202 is located separately from the session manager 216 (see Fig. 2).

Claim 14, wherein the session manager 216, Fig. 4 (page 20, lines 33-page 21, lines 19) comprises:

A monitoring module 218 for receiving acquisition, release, and request messages from a plurality of terminals;

A tracking module 220 for maintaining a dynamically list of terminals that are presently acquiring each demand-cast stream (page 14, lines 28-34; page 18, lines 1-6); and

A controlling module 222 for informing the transport stream generator 202 when a terminal requests demand-cast stream which is not present in the transport stream and for informing the transport stream generator when there is no longer any terminals acquiring the demand-cast stream (page 21, lines 16-19).

Claim 15, wherein the transport generator comprises:

An interface to a session manager 216 for receiving demand-cast stream usage information from the session manager 216 (page 14, lines 17-22);

A multiplexer 214 for multiplexing demand-cast streams into a transport stream for transmission to a plurality of terminals via a distribution network (page 4, lines 31-34+ and page 13, lines 18-20); and

A controller 212 for controlling which demand-cast streams are multiplexed into the transport stream using the demand-cast stream usage information (page 13, lines 10-20).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is 703-308-7372. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher C. Grant can be reached on 703-305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HT:ht
02/03/2005

A handwritten signature in black ink, appearing to read "HAITRAN", is written over two horizontal lines.

**HAITRAN
PRIMARY EXAMINER**